

I. SUBJECT

Right to Education

II. PURPOSE

Each local education agency (LEA) shall provide a free appropriate public education (FAPE) to all eligible students with disabilities who are detained or incarcerated in county/city-operated detention centers.

III. APPLICABILITY

This policy applies to all students with disabilities who are legally mandated to receive an education in Tennessee through the school year in which their 22nd birthday occurs while being detained or incarcerated in county-operated detention centers, however, the obligation to make FAPE available to all students with disabilities does not apply with respect to students aged 18 through 21 who, in their last educational placement prior to their incarceration in an adult correctional facility, were not actually identified as being a student with a disability and did not have an IEP.

IV. REFERENCES

- State Board of Education Rules, Regulations and Minimum Standards, *TN ADC 0520-1-9*.
- Individuals with Disabilities Education Act (IDEA), *20 U.S.C. §1400 et seq.* and accompanying regulations, *34 C.F.R. § 300 et seq*
- Section 504 of the Rehabilitation Act 1973, *29 U.S.C. § 706(8), 794, 794a, 794b* and accompanying regulations, *34 C.F.R. § 104.1 et seq.*
- Americans with Disabilities Act (ADA), *42 U.S.C. § 12101*

V. DEFINITIONS

Words and phrases used in this Policy shall have the following definitions:

“Local Education Agency” – means a public school district within the State of Tennessee which is mandated to provide educational services to eligible children.

“County-operated Detention Centers” – shall include, but not be limited to the local juvenile detention center, local county and/or city jail, and penal farms. Persons who are county prisoners shall be educated or caused to be educated by the LEA.

Persons who are state prisoners and who are in the custody of the county jail shall be educated by the Department of Corrections (DOC) and/or the Department of

Children Services (DCS), or caused to be educated by the LEA serving the county-operated detention center.

“Detainee” – a person who is being held awaiting trial or has been convicted of a crime and is incarcerated.

VII. PROCEDURES

A. Identification of Students in County-Operated Detention Centers

Upon determining that a detainee will be detained for 10 days or longer, each county-operated detention center shall implement systematic referral procedures to assure that detainees who are identified as having disabilities, or suspected of having disabilities, are referred to the LEA or other appropriate agency. The referral procedures will include the following steps:

- (1) The county-operated detention center shall identify each detainee who has a disability, is suspected of having a disability, or who previously received special education services under IDEA, Section 504, or the ADA.
- (2) Identification data to be obtained shall include information pertaining to:
 - any known or suspected disability;
 - the last school attended and any special services received;
 - school records (assessment/evaluation reports, cumulative records, etc.) if available;
 - the detainee's age and desire to receive educational services;
 - If detainee is over 18 and does not wish to receive educational services, a written explanation shall be obtained.

[Detention centers may utilize Form A (attached) to obtain identification information from detainees.]

B. Referral to the LEA for Assessment

County-operated detention centers shall forward all available identification information on detainees to the LEA where the facility is located. If the detainee is a state prisoner, the information will be forwarded to the DOC or DCS. Upon receipt

of the information, the LEA shall ensure that the following steps are completed within 45 days from the date of referral:

- (1) Within 72 hours, a review will be conducted to determine whether the detainee has current academic and special education records, received special education services in the last placement, and had an Individual Education Plan (IEP).
- (2) Where the detainee has current records and an IEP, the LEA or appropriate agency shall proceed to Part C of this Policy – Implementation of Educational Plan.
- (3) For detainees suspected of having a disability and/or do not have current assessment data or an IEP available, special education staff will request the academic and special education records from the detainee's last school placement. Periodic follow-up shall be made to ensure that the records are received in a timely manner.
- (4) Upon receipt of the school records, special education staff shall determine whether further assessments are warranted based on a suspected physical and/or mental impairment, including: health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.
- (5) Detainees shall be evaluated in accordance with the State Board Rules for Special Education Programs and Services.
- (6) Within 10 days of receiving a referral from a county-operated detention center, the LEA or appropriate agency shall designate a staff member who will serve as the IEP team Chairperson who shall be responsible for:
 - providing written notice to parents before a detainee is evaluated. Signed parental consent shall be obtained for an initial evaluation. If parental consent cannot be obtained after reasonable efforts, the LEA may utilize due process to obtain consent.
 - designating members of the IEP team.
- (7) The IEP team Chairperson shall also be responsible for developing a written plan which identifies areas where information needs to be collected through individual or in-depth assessment of all areas related to the suspected disability. Each person who conducts an individual assessment shall prepare a written report for consideration by the IEP team.
- (8) If the IEP team Chairperson is not knowledgeable in the area of the suspected impairment, he/she shall make sure that such persons help

develop the assessment plan. The individual assessment should provide descriptive and prescriptive information that is adequate to assist in planning an appropriate program for the detainee. The individual assessment shall include, for every child 14 years of age or older, a comprehensive vocational assessment.

- (9) No single procedure shall be used to assess whether or not a child has a physical or mental impairment or as the sole criterion for determining an appropriate educational program.
- (10) The integrated assessment report shall be completed and submitted to the IEP team Chairperson. After receiving the Assessment Team Report, the Chairperson shall convene an IEP team meeting for the purpose of determining whether the detainee is eligible for special education and related services. The IEP team shall include the following participants:
 - (1) The parents of the student;
 - (2) At least one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);
 - (3) At least one special education teacher of the student, or if appropriate, at least one special education provider of the student;
 - (4) A representative of the LEA who--
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of student with disabilities;
 - (ii) Is knowledgeable about the general curriculum; and
 - (iii) Is knowledgeable about the availability of resources of the LEA;
 - (5) An individual who can interpret the instructional implications of evaluation results;
 - (6) At the discretion of the parent or LEA, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
 - (7) If appropriate, the student.
- (11) If the IEP team determines the detainee is eligible to receive special education and/or related services, the IEP team shall be responsible for developing an IEP or an appropriate plan for the individual. When the parent is not present, although efforts have been made to have the parents participate the IEP team shall proceed with the IEP and placement recommendation, which may be sent to the parent with a request for parental consent.
- (12) In conducting psychological or psychiatric evaluations to determine eligibility for educational services or to assist in formulating an appropriate educational plan, evaluators will adhere to detainees' constitutional rights as they pertain

to criminal matters that may be unrelated to the proposed psycho-educational assessment. Students should not be questioned in educational evaluations about underlying events or charges that led to their confinement.

C. Implementation of Educational Plan

Each LEA or appropriate agency, in coordination with the county-operated detention center, must provide special education and related services to detainees with disabilities in accordance with the IEP or a Section 504 Educational Plan (S-504 Plan). Current IEPs must be reviewed and one of the following actions shall be implemented:

(1) Continuation of current IEP

Implement the IEP as written. The LEA or appropriate agency can determine that the IEP is current, appropriate and can be implemented as written in the county-operated detention center.

(2) Interim IEP

Implement an interim IEP, which determines the specific conditions and timelines for the interim placement. Parents must be informed and invited to participate in the process of reviewing and revising the IEP. An interim IEP may be written for 30 days. An IEP team meeting will be conducted at the end of the interim period to finalize the IEP.

(3) Development of a New IEP

- The IEP or S-504 Plan must be implemented after completion by the IEP team. The LEA or appropriate agency shall ensure that all IEPs or S-504 Plans meet the standards specified in the State Board of Special Education Rules and Regulations and Section 504 of the Rehabilitation Act 1973 and accompanying regulations, respectively.

D. Student/Parental Rights & Confidentiality of Records

- (1) The LEA or appropriate agency shall implement, with respect to actions regarding the identification, evaluation, or educational placement of persons, who because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes prior written notice, an opportunity for the parents/guardians to examine relevant records, an impartial hearing with opportunity for participation by the person's parents/guardians and representation by counsel, and a review procedure.

- (2) The LEA or appropriate agency shall ensure that the detainee and parents/guardians are given their procedural safeguards and due process rights consistent with the State Board Rules for Special Education Programs and Services.
- (3) Parents/guardians maintain the right to inspect any and all data that are subject to collection and the right to appeal the accuracy of any such information. The access of unauthorized persons to personally identifiable data without parent/guardian consent is forbidden. Confidentiality standards will be maintained in accordance with State Board Rules for Special Education Programs and Services.

VIII. Special Considerations for Implementing Educational Services in County-Operated Detention Centers

In delivering educational services to detainees in minimum- and maximum-security county-operated detention centers, special consideration shall be given to the following:

- Location of the educational program in a secure area with adequate security staff assigned in and/or outside of the classroom as needed.
- Implementation of Discipline Rules that detainees will be required to follow in order to participate in the educational program. The Rules shall prohibit any behavior or conduct (verbal or physical) which poses a threat to the safety of the individual or others in the educational setting.
- Training of all staff involved in implementing the educational program in county-operated detention centers.
- Contracting with outside agencies (where appropriate) to deliver education services in county-operated detention centers.
- Ensuring that the educational program is staffed appropriately with certified or licensed special education staff to render services designated in a detainee's IEP or S-504 Plan.
- Developing a plan for delivering educational services to detainees through the joint efforts of more than one LEA.

Form A

Name: _____

Address _____

City State

Last School Attended: _____

School District: _____

When Did You Attend?: _____

1. Were you enrolled in school before you were arrested? Yes ☐ No ☐

2. Were you receiving special education or related services, or were you eligible for modifications in your school program before you were arrested?
☐ Yes ☐ No

3. If you are over 18 do you wish to obtain educational services?
☐ Yes ☐ No

If you marked "NO" to Question #3, please explain why you do not wish educational services.

Detainee

Jailer

NOTICE: In compliance with an agreement with the U.S. Department of Education, Officer for Civil Rights, this form must be completed and forwarded to the local educational agency serving the jurisdiction where this detention center is located.